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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,)
)
 Plaintiff-Respondent,) NO. 38633
)
 vs.)
)
 BILLY RANCIE OLDHAM, JR.,)
)
 Defendant-Appellant.)
)

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF CASSIA**

**HONORABLE MICHAEL R. CRABTREE
District Judge**

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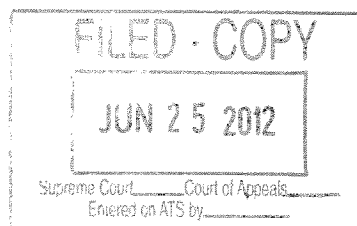


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STATEMENT OF THE CASE

Nature of the Case

Billy Rancie Oldham appeals from the district court's denial of his motion to terminate a no contact order.

Statement of Facts and Course of Proceedings

The state charged Oldham with first degree arson. (Information (augmentation).) Upon his plea of guilty to arson, the trial court sentenced Oldham to a unified sentence of 15 years with the first five years fixed. (Judgment of Conviction and Order of Commitment (augmentation).)

The state sought an order preventing Oldham from having contact with Sabre Oldham, Patricia Ferrell, and Ronnie Ferrell, asserting they were witnesses or victims in the arson case and "they continue to be contacted by [Oldham] against their wishes." (Motion for No Contact Order (augmentation).) Oldham objected to the state's motion for a no contact order because it would prevent him from having contact with his minor children who resided with Sabre Oldham and her parents Patricia and Ronnie Farrell. (Objection to Motion for No Contact Order (augmentation).) The district court entered a no contact order on January 21, 2009 preventing Oldham from having contact or communication with "the alleged victim Sabre Oldham" for a period of one year. (No Contact Order (augmentation).)

In June of 2009, Oldham filed a motion to modify the no contact order against Sabre Oldham, "allowing [him] to have telephone contact with his children pursuant to the Decree of Divorce" or, alternatively, for dismissal of the

order. (Motion to Modify or Motion to Dismiss No Contact Order (augmentation).) Following a hearing on the motion, the district court granted the request for modification of the no contact order providing “[Oldham] can place a telephone call to Sabre Oldham solely for the purpose of telephone conversation with [Oldham’s] minor children, as provided in [the divorce decree].” (Order on Motion to Modify or Dismiss No Contact Order (augmentation).) The expiration date of the order was extended by the court to December 15, 2023. (Id.)

In February of 2011, Oldham filed a *pro se* motion to terminate the no contact order. (R., pp.21-23.) The state objected to the motion to terminate the order (R., pp.24-25) and the district court denied Oldham’s motion, finding:

In its discretion, the court imposed the No Contact Order in this case because the court found that such an order was appropriate and necessary to protect Ms. Oldham. There is nothing in the Defendant’s Motion that now persuades the court that the No Contact Order should be modified or terminated

(R., p.27).

Oldham timely appealed. (R., p.29.)

ISSUE

Oldham states the issue on appeal as:

Did the district court abuse its discretion when it denied Mr. Oldham's motion to terminate the no contact order?

(Appellant's brief, p.4.)

The state rephrases the issues on appeal as:

Has Oldham failed to establish the district court abused its discretion when denying his request to terminate the no contact order?

ARGUMENT

Oldham Has Not Shown The District Court Abused Its Discretion In Denying Oldham's Motion To Terminate The No Contact Order As Against His Sabre Oldham

A. Introduction

Oldham argues on appeal that the district court erred in denying his motion to terminate the no contact order in light of the information provided in his motion in addition to the "facts known to the district court at the time that it issued the original no contact order." (Appellant's brief, p.5.) Oldham has failed to establish an abuse of the district court's discretion in the denial of his motion.

B. Standard Of Review

"The decision whether to modify a no contact order is within the sound discretion of the district court." State v. Cobler, 148 Idaho 769, 771, 229 P.3d 374, 376 (2010). In evaluating whether the trial court abused its discretion, this Court considers (1) whether the trial court perceived the issue as discretionary; (2) whether the trial court acted within the boundaries of its discretion and consistent with any applicable legal standards; and (3) whether the trial court exercised reason in reaching its decision. Id. (citation omitted).

C. Oldham Has Failed To Establish The District Court Erred In Denying His Motion To Terminate The No Contact Order

Idaho Code § 18-920 provides:

When a person is charged with or convicted of an offense under section 18-901, 18-903, 18-905, 18-907, 18-909, 18-913, 18-915, 18-918, 18-919, 18-6710, 18-6711, 18-7905, 18-7906 or 39-6312, Idaho Code, or any other offense for which a court finds that

a no contact order is appropriate, an order forbidding contact with another person may be issued.

I.C. § 18-920 (1). The district court initially entered a no contact order preventing Oldham from having contact with Sabre Oldham, the mother of his children and a witness in the underlying arson case (No Contact Order (augmentation)) upon motion by the state requesting the order on the basis that Oldham continued to contact Sabre Oldham against her wishes (Motion for No Contact Order (augmentation)). Upon Oldham's subsequent motion to dismiss or terminate the no contact order, the district court modified the order to permit telephone contact with Sabre Oldham for the sole purpose of talking to their children on the phone. (Order on Motion to Modify or Dismiss No Contact Order (augmentation).) This modification was made after a hearing on the motion wherein the court was provided with letters from Oldham addressed to his minor children but containing messages for Sabre Oldham. (Tr., p.11, L.6 – p.13, L.17 (augmentation).) The court at that time found:

. . . there's no question in my mind that from the content in your letters to your children – well, it's just not in your kid's best interest to be commenting to them about their mother, but I'm going to leave those decisions to you, and I'm going to leave those decisions as to what the implications may be to the discretion of the trial court who has full jurisdiction over custody, visitation and control of your children.

(Tr., p.17, Ls.14-23 (augmentation).)

Almost two years later, Oldham filed a *pro se* motion to terminate the no contact order from prison. (R., pp.21-23.) Oldham requested the order be terminated because there had been no reason for its imposition in the first place based on the lack of any claims of threats of violence or "verbal disrespect" on

his part. (R., p.22.) The district court denied Oldham's motion to terminate the no contact order, noting both that the state had filed an objection and Oldham had not requested a hearing:

A court has discretion in granting or denying a motion to modify or terminate a no contact order. The court perceives this issue as a matter of discretion. The court exercises that discretion within the bounds provided by the following legal authority. Idaho Code § 18-920(1) provides: "When a person is charged with or convicted of an offense . . . for which a court finds that a no contact order is appropriate, an order forbidding contact with another person may be issued."

In its discretion, the court imposed the No Contact Order in this case because the court found that such an order was appropriate and necessary to protect Ms. Oldham. There is nothing in the Defendant's Motion that now persuades the court that the No Contact Order should be modified or terminated.

(R., p.27 (case citation omitted).)

On appeal, Oldham argues there was no evidence at the time of the issuance of the no contact order that Oldham's attempts to contact Sabre Oldham were for the purpose of harming or threatening her. (Appellant's brief, p.7.) The district court, however, found otherwise in determining from the information before it the order was necessary to protect Sabre Oldham and Oldham has failed to establish this determination by the court was erroneous. Oldham appears to further argue the no contact order should have been terminated upon his request because there was nothing in the record to indicate Oldham had tried to contact Sabre Oldham since the no contact order was issued:

. . . along with the fact there was no information that, in the more than two years that elapsed between the issuance of the initial no

contact order and [Oldham's] motion to terminate that order, [he] ever violated – or attempted to violate – the no contact order . . .

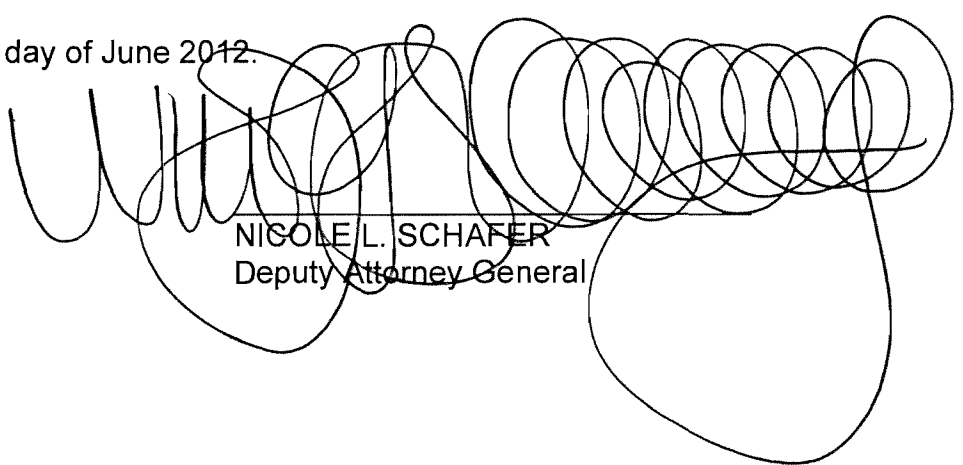
(Appellant's brief, p.7.) Oldham cites to no authority for the proposition that continued adherence to a no contact order is reason to terminate such order. Contrary to his argument, the fact of Oldham's continued no contact with Sabre Oldham is evidence of the success of the no contact order, not of an erroneous decision by the district court.

Oldham has failed to establish that the district court's exercise of discretion in denying his motion to terminate the no contact order was an abuse of said discretion.

CONCLUSION

The state respectfully requests this Court uphold the district court's denial of Oldham's motion to terminate the no-contact order.

DATED this 25th day of June 2012.



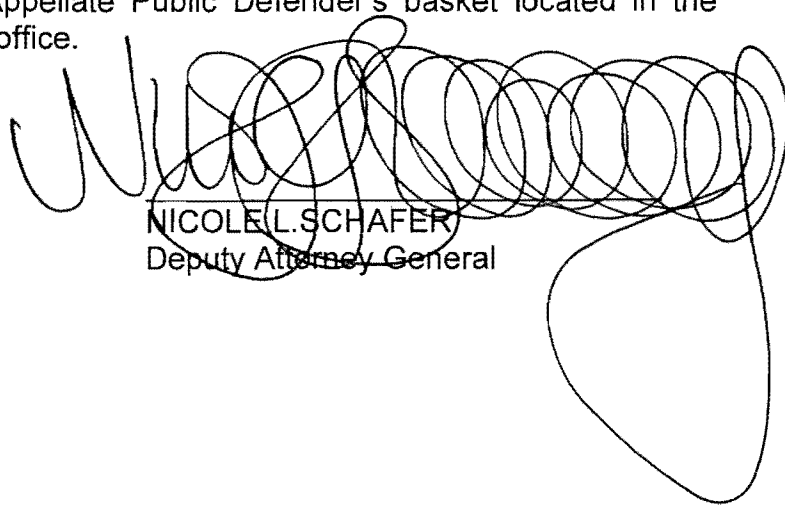
NICOLE L. SCHAFER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 25th day of June 2012, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

SPENCER J. HAHN
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.



NICOLE L. SCHAFER
Deputy Attorney General

NLS/pm